

The Commonwealth of Massachusetts State Ethics Commission



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University of Massachusetts
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John W. McCormack State Office Building, Room 619
One Ashburton Place, Boston 02108
Telephone (617) 727-0060
Fax (617) 723-5851

THE CONFLICT OF INTEREST LAW and PLANNING BOARD MEMBERS

Planning Board members are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid must abide by the restrictions of the conflict law.

The purpose of the conflict law is to ensure that your private financial interests and relationships do not conflict with your responsibilities on the Planning Board. The law is broadly written so that situations which even give the appearance of a conflict may be avoided.

If you have been designated as a "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) Most Planning Board members may be designated as specials; see the Commission's Fact Sheet, "Special Municipal Employees" for information on eligibility and the process of designation.

CONFLICT QUESTIONS AND ANSWERS

Accepting Gifts (Section 3)

- Q:** A development company has recently received your board's approval for a subdivision plan. To foster goodwill and say thank you, the developer offers each of the board members a gift certificate to a fine restaurant in Boston. May you accept?
- A:** It depends. You may not accept a gift of substantial value (\$50 or more), which is given to you because of the town position you hold, from someone or some group with whom you have official dealings -- even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill. If your dinner is worth \$50 or more, you may not accept the gift certificate.

If the dinner is valued at less than \$50, you may accept the gift provided it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict law permits local boards to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts to avoid any appearance of conflict or favoritism which may be created by accepting gifts.

Prohibited Actions Affecting Financial Interests (Section 19)

- Q:** You are a site engineer for a development company presently building condominiums in town. May you deliberate and vote on your company's proposed subdivision plan if you have not worked on the plan?
- A:** No. You may not participate in any matter that affects the financial interest of your employer (whether or not you worked on the matter for your company). You also may not act on a matter that affects your own financial interest or those of your "immediate" family or of a business for which you serve as officer, director, partner or trustee. You also must abstain on matters affecting your competitors.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, if your sister is an abutter to a proposed subdivision (whether or not she challenges the subdivision), you should abstain when the issue comes before your board. Your sister, as abutter, has a financial interest in the matter.

There is an exemption to this restriction available for appointed planning board members. If you are appointed, you may act on a matter affecting your own, your family's or your business' financial interest only if you receive written permission from your appointing authority prior to taking any action.

A final exemption allows you to act as a planning board member on any determination of "general policy" which affects a substantial segment of your community's population in the same way. For example, you are a local developer. Your board is drafting zoning changes which would affect a major portion of the geography of your town. These changes would affect your financial interest because of your business in town, but because they would also affect a large area and a large segment of your town's population, you may participate in drafting the new zoning changes. Not all zoning changes will fall into the category of "general policy." Seek advice from your local town or city counsel or the Ethics Commission if you have specific questions.

Appearances of Conflict and Misuse of Official Position (Section 23)

- Q:** Your cousin, a lawyer, is representing a client before your board. May you participate in the matter?
- A:** Yes, provided that you publicly disclose your private relationship with your cousin prior to taking any action. If you are an appointed planning board member, your disclosure must be made in writing to your appointing authority (whatever board or person appointed you to the Board). If you are elected, your disclosure must be made in writing and filed with the town or city clerk. These disclosures must be kept available for public inspection. We also suggest that you make a verbal disclosure at a public meeting in which the matter arises. The disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives (who are outside the definition of "immediate family") or friends.

In addition, you must act objectively and not attempt to obtain any special favors for your cousin because of your relationship. Using your position to secure unwarranted privileges for people always violates the law, regardless of whether you disclosed your private relationship.

See, Commission Fact Sheet, "Avoiding Appearances of Conflicts of Interests" for more detailed information.

Restrictions "After Hours" (Section 17)

- Q:** You are a professional engineer working for a development company. May you represent the development company before the conservation commission concerning a development located in wetlands?
- A:** If you are a regular municipal employee, no. You may not act as the agent or attorney for any private party, including your own company, before town boards. Representing a private company before a town board is acting as that company's agent; it doesn't matter whether you are paid or not.

If you are a "special" municipal employee, it depends. You may represent private parties before other town boards (not your own) unless it is a matter in which you officially participated or which is now or within the past year was within your official responsibility as planning board member. In this example, if the proposed development already was before the planning board or was about to come before the planning board, you could not represent the development company before the conservation commission, whether or not you are designated as a special. To emphasize, it is not enough simply to abstain from official action on your own board - if the same matter is before other town boards you must not act as the representative for a private company before those boards.

Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)

- Q:** You want to serve as elected school committee member. If elected, may you hold positions both on the planning board and school committee?
- A:** It depends. If you are elected in both positions, yes. If both positions are unpaid (whether they are elected or appointed), yes. If the planning board position is appointed and unpaid, and the elected school committee position is paid, you may hold both positions. However if the planning board position is appointed and paid, you must be designated as a special municipal employee in the school committee position in order to hold both positions.

Talk to your municipal lawyer about the technical requirements you must meet to hold multiple positions or call the Ethics Commission on this one: (617) 727-0060.

Restrictions After You Leave Government Service (Section 18)

- Q: You have resigned as a member of the planning board and now work for a developer who has a project pending before the city. May you represent the developer before various city boards and agencies?
- A: It depends. 1) You may not represent the developer before a city agency concerning a matter in which you participated as a planning board member. 2) For one year after you leave the commission, you may not appear before city boards on a matter which was under your official responsibility if it was before your board within two years before you left 3) You may represent the developer before city agencies (including your own) with no "cooling off" period, on a matter you never dealt with and which was not before your board while you were a member of the board.

LEGAL ADVICE

This summary presents a brief overview of the conflict law and suggests activities which you, as a Planning Board member, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at (617) 727-0060 for particular advice on the conflict law.

If you have a question about your own activities, we urge you to request advice prior to engaging in the activity in question.

If you have questions about others' activities in your town or city, urge them to use the opinion process. In addition, complaints may be filed with our Enforcement Division in person, by phone (at the same number listed above) or by letter. The identity of complainants is kept confidential.

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Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law.

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